IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.2744 of 1989

Shri Kisan Balu Yeole,
residing at Wadi, Tal.Khatav,
Dist.Satara. Petitioner

Vs.

1. Smt.Hirabai Dnyanu Yeole
   Since deceased through legal
   heirs:
2. Shri Sahebrao Dnyanu Yeole
3. Shri Bhanudas Dnyanu Yeole
4. Smt.Sindhubai Pralhad Jadhav
5. Shri Dinkar Dnyanu Yeole
6. Shri Baliram Dnyanu Yeole
7. Shri Shivaji Dnyanu Yeole
8. Smt. Vijutai Vilas Deshmukh
9. Shashikala Dnyanu Yeloe
   for self and as heirs of deceased
   Resp.No.1. Nos.2, 3 and 5 to 7 and
   9 residing at Wadi, Post Kalambi,
   Tal.Khatav, Dist.Satara. No.4 R/o.
   Arvi, Tal.Kopargaon, Dist.Satara.
   No.8 residing at Kurvali,
   Tal.Khatav, Dist.Satara. Respondents

Mr.S.G.Karandikar h/f. Mr.P.S.Dani for petitioner.

Mr.H.D.Gole with Mr.P.S.Gole for Resp.Nos.1, 2, 4, 6 and 8.

Resp.Nos.3, 5, 7 and 9 are served.

CORAM: B.H.MARLAPALLE,J.

June 21, 2006.

ORAL JUDGMENT:

1. The present petitioner claims to be the L.R. of Daulu Aba Yeole by way of a written Will in respect of the suit agricultural land viz. land in

Survey No.25/9A (Gat No.178) and Survey No.25/9E (Gat No.187) of village Wadi, Tal. Khatav of Satara District. It appears that late Daulu Aba was a protected tenant on the said land which was Patel Inam land and one Shri Ramrao Krishnrao Deshpande was the Inamdar. Daulu Aba Yeole sold the suit land to Dnyanu Babaji Yeole on 4/5/1966 for a consideration of Rs.1500/- and thereafter Dnyanu Babaji started cultivating the land. The Maharashtra Revenue Patels (Abolition of Office) Act, 1962 was brought into force on 1/1/1963 and in terms of Section 3 of the said Act Patel Watan came to be abolished from that date and the land stood resumed in favour of the Government in terms of Section 3(c) of the said Act. Under Section 5 of that Act the land could have been regranted to the original Inamdar but the record does not indicate whether such a regrant was in fact made any time after 1/1/1963 or till the sale deed dated 4/5/1966 was signed and registered.

2. Daulu Aba Yeole instituted Regular Civil Suit No.175 of 1975 for a declaration that the sale deed dated 4/5/1966 was not an outright sale but it was a sale by mortgage and that the suit land be restored to him from the possession of the defendant viz.

Dnyanu Babaji Yeole, the present respondents' predecessor. The defendant filed reply in the suit and submitted, inter alia, that Dnyanu Babaji Yeole was tenant prior to the execution of the sale deed and his possession as owner over the suit land was confirmed by the said sale deed. The learned Judge of the trial Court framed the following issue:

> "Does the defendant prove that he was the tenant in the suit lands on the date of sale deed dated 4/5/1966?"

The learned Judge of the trial Court referred the issue so framed to the ALT for recording its findings as to whether as on 4/5/1966 Dnyanu Babaji Yeole was the tenant on the suit lands. The ALT issued notices to the LRs of Daulu Aba Yeole and Dnyanu Babaji Yeole and after hearing both the parties by his order dated 31/3/1983 Tahsildar, Khatav held that Dnyanu Babaji Yeole proved that he was a tenant in the suit lands on the date of the sale deed dated 4/5/1966. This order was challenged in Tenancy Appeal No.60A/1983 and the said appeal came to be allowed by the Sub Divisional Officer, Phaltan Division at Phaltan on 18/4/1985. The defendant, therefore, went before the

Maharashtra Revenue Tribunal by way of Revision Application No.140 of 1985. The same came to be allowed and the order dated 18/4/1985 passed by the SDO was set aside whereas the order dated 31/3/1983 passed by the Tahsildar came to be confirmed. The 7/12 extracts available in the R. & P. have been perused in respect of both the gat numbers and it is seen that for the first time there is a pencil entry in the name of Dnyanu Babaji Yeole as the cultivator/tenant for the agricultural year 1959-60 but in the subsequent years the said entry does not appear in his name and it reappears for the agricultural year 1964-65. On signing the sale deed dated 4/5/1966 the pencil entry has been converted into an ink entry for the year 1966-67 onwards in the name of Dnyanu Babaji Yeole. This record, prima facie, shows that as on the date of the sale deed Dnyanu Babaji Yeole was cultivating the land but in any case he was not the protected tenant. This record also goes to show that Daulu Aba Yeole was the permanent tenant and he could not have any right to sell the said land to Dnyanu Babaji Yeole. It is also pertinent to note that as on the date when the sale deed was signed, the land was resumed and was vested with the State Government. There is nothing

on record that on the date of the sale deed the said land was regranted either to the original Inamdar or to someone else by the State Government. Even otherwise in the absence of the original Inamdar landlord there could not have been any alienation of the suit land by way of sale and such a transaction would certainly be contrary to the scheme of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short "the Tenancy Act") and the Maharashtra Revenue Patels (Abolition of Office) Act, 1962 (for short "the Abolition Act"). The present petitioner's predecessor viz. Daulu could have no basis to file the suit and seek a declaration against Dnyanu Babaji Yeole. Their respective rights limited to cultivation or the right of Daulu Aba for purchase of land under Section 32G of the Tenancy Act could not have been decided by the Agricultural Lands Tribunal. The remedy of filing a suit in the absence of regrant of the land under Section 5 of the Abolition Act as well as without impleading the watandar-landlord was only an illusion. It is also pertinent to note that even the proceedings initiated by the Tahsildar on the reference having been made by the learned Civil Judge, Junior Division could not proceed without verifying the record whether the land was regranted

or it remained only with the State Government. In any case Daulu Aba Yeole could never claim as the owner of the land unless proceedings under Section 32G of the Tenancy Act have been decided in his favour either on his application or suo motu and certificate of ownership under Section 32M of the said Act was granted in his favour. However, such is not the case as on the date of the sale deed.

3. Keeping this legal position in mind, the learned counsel for the petitioner fairly conceded that the remedy of the suit is not the appropriate remedy and it would be necessary that the proceedings under the Tenancy Act are initiated before the ALT either by one of the parties or suo motu and the rights of the respective parties in this petition are decided by verifying the record regarding regrant, if any, as well as the rights of the original watandar, if any.

4. In the premises this petition is partly allowed and the impugned order passed by the Maharashtra Revenue Tribunal is hereby quashed and set aside and at the same time the declaration made in Tenancy Appeal by the SDO also does not survive.

Parties are at liberty to approach the Agricultural Lands Tribunal under the Tenancy Act so as to get their respective rights adjudicated in respect of the suit lands. The petitioner will approach the trial Court and apply for withdrawal of the suit before such proceedings are initiated under the Tenancy Act.

5. Rule is made absolute in terms of the above directions but without any order as to costs.

6. It is hereby clarified that the proceedings to be initiated under the Tenancy Act either by any of the parties or suo motu will be decided as per law and without being influenced by the observations made in this order.

(B.H.MARLAPALLE,J.)